

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Laura Strauss	Team: Squad #6	CCRB Case #: 201900218	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 01/02/2019 8:23 AM	Location of Incident: [REDACTED]	Precinct: 52	18 Mo. SOL 7/2/2020	EO SOL 2/16/2021	
Date/Time CV Reported Wed, 01/02/2019 10:22 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 01/08/2019 11:11 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Yordani Capellan	04335	960321	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Gladis Cardenas	04338	960323	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Yordani Capellan	Discourtesy: Police Officer Yordani Capellan spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Yordani Capellan	Abuse: Police Officer Yordani Capellan threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On January 2, 2019, § 87(2)(b) filed this complaint over the phone with the NYPD's Internal Affairs Bureau, under original log number 2019-170. On January 8, 2019, the CCRB received this complaint from IAB.

On January 2, 2019, at approximately 8:23 a.m., Police Officer Yordani Capellan and Police Officer Gladis Cardenas, both of the 52nd Precinct, responded to 911 calls made by § 87(2)(b) and his mother, § 87(2)(b) about a dispute they were having, at § 87(2)(b) in the Bronx. When § 87(2)(b) tried to explain his side of the story to the officers, PO Capellan allegedly stated, "Hold the fuck on" and "Shut the fuck up" (**Allegation A: Discourtesy:** § 87(2)(g) PO Capellan threatened to arrest § 87(2)(b) for trespassing (**Allegation B: Abuse of Authority:** § 87(2)(g) No arrest or summonses resulted from this incident.

Three body-worn camera videos captured part of this incident. The footage can be found in Investigative Actions 71-73 (Board Review 01-03). Summaries can be found in Investigative Actions 76, 83, and 85 (Board Review 04-06).

Findings and Recommendations

Allegation (A) Discourtesy: Police Officer Yordani Capellan spoke discourteously to § 87(2)(b)

It is undisputed that when PO Capellan and PO Cardenas entered § 87(2)(b)'s residence, they spoke with § 87(2)(b) first. While PO Capellan and PO Cardenas were speaking with her, § 87(2)(b) tried to get the officers' attention in order to speak with them.

§ 87(2)(b) testified (Board Review 07) that he was frustrated that both PO Capellan and PO Cardenas spoke to § 87(2)(b) first, even though he initially called 911. § 87(2)(b) tried to wave the officers toward the back, to explain his side of the story. PO Capellan told § 87(2)(b) to wait and when § 87(2)(b) asked again to speak with them, PO Capellan stated, "Hold the fuck on." They began arguing and PO Capellan stated, "Shut the fuck up."

In her phone statements, § 87(2)(b) stated (Board Review 08-09) that officers did not use any profanity toward § 87(2)(b) in her presence. § 87(2)(b) did not hear the entire conversation between § 87(2)(b) and the officers.

PO Capellan and PO Cardenas both testified (Board Review 10-11) that after § 87(2)(b) tried to get their attention, PO Capellan told § 87(2)(b) that they would to speak with § 87(2)(b) first and then speak with him. PO Capellan testified that he did not tell § 87(2)(b) "Hold the fuck on" and did not recall stating, "Shut the fuck up." PO Capellan did not recall using profanity toward § 87(2)(b) at any point. PO Cardenas testified that PO Capellan did not tell § 87(2)(b) to "hold the fuck on" or "shut the fuck up." She further testified that PO Capellan did not use profanity at any point throughout the incident.

The body-worn camera footage did not capture any discourteous statements made by PO Capellan. Both PO Capellan and PO Cardenas testified that they turned on their cameras "almost immediately" upon arriving to the location. However, the footage begins at least partway through

the incident. § 87(2)(g)

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Yordani Capellan threatened to arrest

§ 87(2)(b)

PO Capellan and PO Cardenas' body-worn camera footage depicts § 87(2)(b) repeatedly stating that she wants § 87(2)(b) to leave. PO Capellan and PO Cardenas told § 87(2)(b) to leave several times, but § 87(2)(b) did not leave for at least thirty minutes after he is initially asked to leave. PO Capellan asked § 87(2)(b) whether she wanted § 87(2)(b) arrested for trespassing and she replied in Spanish, "Go arrest him, I don't care." PO Capellan also stated to PO Cardenas in § 87(2)(b)'s presence, "I'm asking one more time, if he's gonna refuse to leave, and then I'm just gonna collar him." Sergeant Aneudy Rosa, of the 52nd Precinct, arrived at a later point and his body-worn camera footage did not capture this portion of the incident.

Additionally, it is undisputed that § 87(2)(b) did not permanently reside at § 87(2)(b), although he had § 87(2)(b)'s permission to be in the apartment prior to their dispute.

§ 87(2)(b) testified that after their dispute, § 87(2)(b) asked him to leave the apartment. PO Capellan asked § 87(2)(b) whether she wanted them to arrest § 87(2)(b) for trespassing, which § 87(2)(b) interpreted as a threat.

§ 87(2)(b) did not allege that an officer threatened to arrest § 87(2)(b). As noted previously, § 87(2)(b) did not hear the entire conversation between § 87(2)(b) and the officers.

PO Capellan testified that he informed § 87(2)(b) that he could be arrested for trespassing if he refused to leave. § 87(2)(b) replied that he was not refusing to leave and that he had been there for two weeks. In his interview, PO Capellan explained that even if § 87(2)(b) was there for two weeks, he would be considered trespassing, which is an arrestable offense.

PO Cardenas testified that PO Capellan told § 87(2)(b) that he could be arrested for trespassing. § 87(2)(b) did not leave the first time the officers asked him to leave. At that point, § 87(2)(b) could have been arrested for trespassing.

New York Penal Law § 140.05 states that a person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises (Board Review 12).

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]

Civilian and Officer CCRB Histories

- § 87(2)(b) [Redacted] has been a party to one CCRB complaint and has been named as a victim in three allegations (Board Review 13).
 - § 87(2)(b) [Redacted]
[Redacted]
- PO Capellan has been a member of service for three years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) [Redacted] declined to mediate this complaint.
- As of May 6, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (Board Review 14).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [Redacted]
[Redacted]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date